

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Amendment of Section 73.202(b),
FM Table of Allotments,
FM Broadcast Stations.
(Christine, Texas)

) MB Docket No. 07-78
) RM-11366
)
)

FILED/ACCEPTED

SEP 24 2007

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

COMMENTS TO ORDER TO SHOW CAUSE

Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc., and Rawhide Radio, L.L.C. (together, the "Joint Parties") hereby submit their Comments to the *Order to Show Cause* released in the above captioned proceeding on August 10, 2007.¹

On June 18, 2007, Linda Crawford filed a Counterproposal in this proceeding, which proposed to allot Channel 245A to Christine, Texas, and Channel 250A at Tilden, Texas. On July 3, 2007, the Joint Parties filed an Opposition to Crawford's Counterproposal noting that it was defective for two reasons. First, the Crawford Counterproposal was short-spaced to two allotments proposed in MB Docket No. 05-112 in violation of Section 73.207 of the Commission's Rules.² Second, Crawford failed to simultaneously file Form 301 applications to specify the proposed facilities at Christine and Tilden, Texas, and pay the required filing fees, as required by the Commission's recent *Report and Order*.³ Thus, the Joint Parties urged the

¹See DA-07-3555.

² *Saint Joseph, Louisiana, et al.*, 21 FCC Rcd 2254 (2006); *Amboy, California, et al.*, 19 FCC Rcd 12405 (2004).

³ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Service*, 21 FCC Rcd 14212 (2006) ("*Report and Order*").

Commission to dismiss Crawford's Counterproposal because it was not technically correct at the time it was filed.

Instead of dismissing the Crawford Counterproposal, however, the Commission issued a Public Notice soliciting comment on Crawford's Counterproposal,⁴ and issued an Order to Show Cause directed to Shafer Communications Group, Inc. to show why Station KRXB(FM)'s channel should not be change to accommodate Crawford's Counterproposal.⁵ These actions by the Commission seem to indicate that it is processing Crawford's Counterproposal as if it were acceptable for filing. Thus, the Joint Parties are filing the instant pleading to again note that the Counterproposal is defective and must be dismissed.

Regarding the short-spacings created by Crawford's proposal to allot Channel 245A to Christine, Texas, and Channel 250A at Tilden, Texas, the Commission acknowledges, in note 2 of the *Order to Show Cause*, that they are short-spaced to proposals in MM Docket Nos. 00-148 and 01-153. However, the Commission fails to note that they are also short spaced to proposals in MB Docket No. 05-112. More specifically, the Channel 245A, Christine, Texas, channel study indicates that the allotment of Channel 245A at Christine is short spaced by 114.84 kilometers to a proposal to allot Channel 245C1 at San Antonio, Texas. Similarly, the Channel 250A, Tilden, Texas, channel study indicates that the allotment of Channel 250A at Tilden is short spaced by 23.37 kilometers to a proposal to allot Channel 249C1 at Converse, Texas.

Crawford notes in her Counterproposal that these short spacings are permissible under the FCC's *Auburn* policy because the counterproposal in MB Docket No. 05-112 was dismissed on June 15, 2007.⁶ Crawford, however, misinterprets *Auburn*. Under *Auburn*, parties can only rely

⁴ See Report No. 2819 (released July 17, 2007).

⁵ See DA-07-3555.

⁶ *Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (2003) ("*Auburn*").

on actions in earlier rule making proceedings that are not yet final if such action is effective.⁷

The Commission's decision in MB Docket No. 05-112 was not effective until July 30, 2007.⁸

Thus, Crawford's Counterproposal was not technically correct when it was filed and it must be dismissed.⁹

As the Joint Parties also noted in their Opposition, Crawford's Counterproposal is also defective because Crawford failed to simultaneously file Form 301 applications to specify the proposed facilities at Christine and Tilden, Texas, and pay the required filing fees, as required by the Commission's recent *Report and Order*. Crawford argues that her Counterproposal is exempt from this requirement because the underlying rule making was filed before these procedures were effective. However, the Commission makes no such distinction in the *Report and Order*. Rather, the Commission states that "a party filing a petition for rule making to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application specifying the proposed facilities."¹⁰ Crawford has not done so for either her Christine or Tilden proposals and thus her Counterproposal must be dismissed.

Crawford's Counterproposal was technically defective when it was filed because it failed to protect two allotments proposed in MB Docket No. 05-112 and because she failed to file Form 301 applications for her proposals. Thus, the Commission must dismiss Crawford's Counterproposal.

⁷ *Id.* at ¶24.

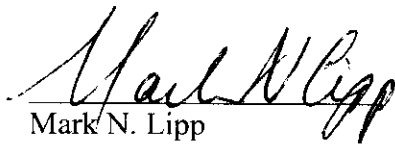
⁸ *See Fredericksburg, Texas, et al.*, 22 FCC Rcd 10883, ¶9 (2007).

⁹ *Saint Joseph, Louisiana, et al.*, 21 FCC Rcd 2254 (2006); *Amboy, California, et al.*, 19 FCC Rcd 12405 (2004).

¹⁰ *Report and Order* at ¶20.

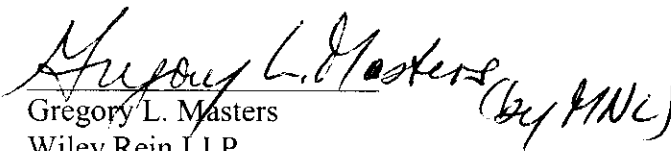
Respectfully submitted,

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September 24, 2007

CERTIFICATE OF SERVICE


I, Elbert Ortiz, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 24th day of September, 2007, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Comments**" to the following:

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*VIA HAND DELIVERY